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In The

Supreme Court of the United States

DERMAN SHANNON
Petitioner,

v.

STATE OF ARIZONA REHABILITATION
SERVICES ADMINISTRATION
Respondent.

On A Petition for A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

DERMAN SHANNON *
25514 AUTUMNWIND CT.
KATY, TEXAS 77494
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* Plaintiff Pro se

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*** Plaintiff Pro se**

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Ninth Circuit

correctly held that the district court properly granted summary judgment on Shannon's race discrimination claims concerning a 1999 remark made by a supervisor and a December, 2000 decision to extend Shannon's probationary period, because Shannon failed to first raise these claims with the EEOC.

2. Whether the United States Court of Appeals for the Ninth Circuit correctly held that the district court properly granted summary judgment on Shannon's claims regarding his reduction in grade without a pay decrease in 2002, and whether Shannon failed to raise a genuine issue of material fact as to whether his employer took this disciplinary measure due to a discriminatory motive rather than due to Shannon's misrepresentation on his job application of the circumstances surrounding his arrest for driving a car containing 200 pounds of marijuana.

RULE 14.1(b) AND 29.6 STATEMENT

The following are the parties to the proceeding in the Court of Appeals for the Ninth Circuit:

1. State of Arizona Department of
Economic Security Rehabilitation
Services Administration, defendant-
appellee; and
2. Derman Shannon, plaintiff -appellant.

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REASONS FOR GRANTING THE WRIT

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1. WHETHER THE UNITED STATES COURT OF APPEALS CORRECTLY HELD THAT THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT ON SHANNON'S RACE DISCRIMINATION CLAIMS CONCERNING A 1999 REMARK MADE BY SUPERVISOR AND A DECEMBER, 2000 DECISION TO EXTEND SHANNON'S PROBATIONARY, BECAUSE SHANNON FAILED TO RAISE THESE CLAIMS WITH EEOC

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2. WHETHER THE UNITED STATES COURT OF APPEALS CORRECTLY HELD THAT THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT ON SHANNON'S CLAIMS REGARDING HIS REDUCTION IN GRADE WITHOUT A PAY DECREASE IN 2002, AND WHETHER SHANNON FAILED TO RAISE A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER HIS EMPLOYER TOOK THIS DISCIPLINARY MEASURE DUE TO DISCRIMINATORY MOTIVE RATHER THAN DUE TO SHANNON'S MISREPRESENTATION ON HIS JOB APPLICATION OF THE CIRCUMSTANCES SURROUNDING HIS ARREST FOR DRIVING A CAR CONTAINING 200 POUNDS OF MARIJUANA

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PETITION FOR WRIT OF CERTIORARI

Derman Shannon respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of court of appeals is not published. The district court's opinion granting summary judgment to defendant is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 22, 2005. The jurisdiction of the court is invoked under 28 U.S.C. Sec. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution provides in relevant part: "[T]he Laws of the United States * * * shall be the supreme Law of the Land * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Section 703 (a) (1) of Title VII, 42 U.S.C. Section 2000e-2, provides that it shall be an unlawful employment practice for an employer * * * to discriminate against any

individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or *

Section 704 (a) of Title VII, 42 U.S.C. Section 2000e-3, provides that it shall be an unlawful employment practice for an employer to discriminate against any of its employees * * * because he has opposed any practice made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

STATEMENT

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race. 42 U.S.C. - 2000e-2 et. seq. Prohibited discrimination includes racial harassment and retaliation. **Harris v. Forklift Sys. Inc., 510 U.S. 17 (1993); 42 U.S.C. - 2002-3.**

Title VII requires employees who believe that they have been subjected to unlawful discrimination to file a claim with an administrative agency prior to proceeding to court. 42 U.S.C. Section 2000e-5(e) (1). A claim is not time barred in a continuing or ongoing action violation claim when an employee is intentionally and continuously subjected to a hostile work environment by an employer, even though an employee fails to file a claim with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the incident, or within 300 days of the incident if the employee first files the charge with a state or local agency.

Hostile work environment claims are different in kind from discrete acts. Because their very nature involves repeated conduct, the "unlawful employment practice," Section 2000e-5(e) (1), cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own. **Harris Forklift Systems, Inc., 510 U.S. 17, 21 114 S.Ct. at 371 (1993).**

A Title VII plaintiff raising claims of discrete discriminatory or retaliatory acts must file his charge within